

FILED

SID J. WHITE

MAR 3 1991
CLERK OF THE COURT
By *[Signature]*

IN THE SUPREME COURT OF FLORIDA

CASE NO. *77,492*

LOWER TRIBUNAL (D.C.A. III)
CASE NO. 90-1822

FLORIDA BAR NO. 562490

*Brief is OK
per SGW*

LAZARO RUBEN GONZALEZ,

Petitioner,

vs.

METRO-DADE POLICE DEPARTMENT

Respondent.

BRIEF OF RESPONDENT ON JURISDICTION

ARTHUR F. MEHRBASS, Esquire
Attorney for Respondent
Metro-Dade Police Department
Dade County Courthouse
73 W. Flagler Street, Rm. 1601
Miami, Florida 33130
Telephone (305) 375-5740

Comes now Respondent, by and through undersigned Counsel, and respectfully submits its brief on jurisdiction which clearly demonstrates that an appeal from a non-final order (interlocutory) of a District Court of Appeal cannot be heard by this Honorable Court.

Petitioner attempts to invoke this Court's jurisdiction pursuant to Article V Section 3(b)(3) of the Florida Constitution and Rule 9.030(2) Fla. R. App. P.

He refers to the ruling of the Third District Court of Appeal as a "decision" and offers no argument or law which brings this non-final order of the Court to the level of a decision, a final order.

The Third District Court of Appeal denied a motion to relinquish jurisdiction and return the case to the Circuit Court for a ruling on a Motion for Rehearing. It is this denial of a motion that Petitioner attempts to raise on appeal here.

The 1980 Amendment to Article 5, Section 3 of the Florida Constitution omitted some of the prior Constitutional language in (b)(3) which is quoted in full below:

(3) May review by certiorari any decision of a district court of appeal . . . or that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law, and any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the supreme court. (emphasis supplied).

The Court will note that interlocutory appeals were eliminated in the 1980 amendment. The very appeal urged by Petitioner.

A final order is that which "constitutes an end to the judicial labor in the Cause, and nothing further remains to be done by the Court to effectuate a termination of the cause as between the parties directly affected." S.L.T. Warehouse Co. v. Webb, 304 So.2d 97 (Fla. 1974). State Farm Mutual Automobile Insurance Co. v. American Hardware Mutual Insurance Co., 345 So.2d 716 (Fla. 1977). Schwench v. Jacobs, 160 Fla. 33, 33 So.2d 592 (1948). Brown v. Mitchell, 151 So.2d 305 (Fla. 1st DCA 1963), cert. den. 157 So.2d 815.

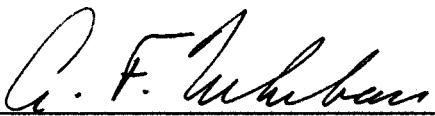
This Cause is before the Third District Court of Appeal where it should be fully resolved. Piecemeal appeals are not in the interest of efficient judicial review. Petitioner is free to seek discretionary review by this Court after the Third District Court of Appeal has rendered a mandate.

Respondent does not address the "conflict" Petitioner cites as grounds for this Court to exercise discretionary jurisdiction for we do not arrive at that juncture unless there is a final order to appeal.

CONCLUSION

It is respectfully submitted that this Court may not exercise discretionary jurisdiction to hear an appeal of a non-final order from a District Court of Appeal.

Respectfully Submitted,


ARTHUR F. NEHRBASS, Esquire
Attorney for Respondent
Metro-Dade Police Department
73 W. Flagler Street, Rm. 1601
Miami, Florida 33130

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a correct and true copy of the foregoing was mailed to PERSE, P.A. & GINSBERG, P.A. 410 Concord Building, Miami, Florida 33130, and to WILLIAM CAGNEY, III, Esquire, 3400 Southeast Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131, this 4 day of March 1991.



ARTHUR F. NEHRBASS, Esquire
Attorney for Respondent